IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

Crl.Rev.Pet.No. 4496 of 2006()

CRA.295/2005 of ADDITIONAL SESSIONS COURT (ADHOC)-II, KOLLAM
CC.662/1999 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

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REVN. PETITIONER: APPELLANT/ACCUSED.

E.BASHEER, MAJMA MANZIL,
KAVANADU P.O., KOLLAM.

BY ADV. SRI.R.SATISH KUMAR

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE.

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1. M/S.BENZ AUTOMOBILE LTD.,
Q.S.ROAD, KOLLAM-1, REP. BY POWER OF ATTORNEY
HOLDER M.V.ANTONY RENJITH, ASST.ACCOUNTANT.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.KAMMAPPU FOR R2
SRI.P.GOPAKUMARAN NAIR FOR R1
SRI.C.S.DIAS
SRI.AJITH MURALI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR.J

Crl.R.P No.4496 OF 2007

Dated this the 6th day of February 2007

ORDER

Heard Admitted. Advocate. P.Gopakumaran Nair takes notice for the first respondent and Public Prosecutor takes notice for the second respondent. This Crl.R.P. itself is disposed of as agreed to by both sides.

2. The accused in C.C. 662/1999 on the file of the Judicial First Class Magistrate Court-II Kollam is the revision petitioner. The revision petitioner was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act convicted and sentenced to undergo simple imprisonment for four months and to pay a fine of Rs. 4,000/- and in default of payment of fine to undergo simple imprisonment for a period of one more month . If the fine is paid or realised the entire amount was ordered to be paid as compensation to the first respondent.

3. The first respondent filed complaint alleging that the petitioner purchased automobile spare parts and issued Ext.P2 cheque in discharge of the debt. It is further averred that when the cheque was presented for collection it was dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the bank. According to the complainant, the petitioner did not repay the amount inspite of the

statutory notice was issued. Hence the complaint.

4. The Power of Attorney holder of the first respondent gave evidence as PW1. He deposed that the petitioner purchased some automobile spare parts from the complainant company and issued Ext.P2 cheque in discharge of that legally recoverable debt. It is also averred that when the cheque was presented for collection it was dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the bank. He also deposed that when the cheque was presented for collection it was dishonoured and returned for want of sufficient funds in the account maintained by the petitioner with the bank. The defence of the revision petitioner is that Ext.P2 cheque was given as a security Though the petitioner denied all incriminating circumstances brought against him he did not adduce any evidence. Both the courts have concurrently found that Ext.P2 cheque was issued in discharge of legally recoverable debt. That is a finding of fact based on good evidence. The evidence also shows that when the cheque was presented for collection it was dishonoured for want of sufficient funds in the account maintained by the petitioner with the bank. Statutory notice was issued . The petitioner received the same but he did not repay the amount. So the evidence on

records shows that the finding of the courts below that the petitioner committed the offence punishable under Section 138 of the Negotiable Instruments Act is correct. The conviction is also to be confirmed.

5. The learned counsel appearing for the petitioner has argued before me that the sentence imposed is highly excessive. According to the petitioner , the first respondent has agreed to withdraw the complaint before the court below, provided the petitioner pay an amount of Rs.12,000/-. Considering all aspects of the matter I am of the view that the substantive sentence is imposed is on the higher side but at the same time the fine imposed is very low. So those are to be set aside and in its place a compensation of Rs. 12,000/- is to be awarded . The default sentence is also to be imposed Petitioner can be given a reasonable time to pay off the compensation and to appear and receive the substantive sentence.

6. In the result Crl.R.P is disposed in the following manner. The finding of the courts below that the petitioner is guilty of an offence punishable under Section 138 of the Negotiable Instruments act is confirmed. The conviction is also confirmed. But the substantive sentence

imposed is modified and reduced to imprisonment till the rising of the court. The fine awarded is set aside and the petitioner is directed to pay a compensation of Rs. 12,000/- under section 357 (3) of the Cr.P.C In default of payment of compensation the petitioner shall undergo simple imprisonment for a further period of one month. The petitioner is given two months time to pay off the compensation

es **K.PADMANABHAN NAIR.JUDGE**